



Chapter 7

D. Procurement

California should drastically modernize its present procurement system that adds additional cost to its purchases and often does not deliver, in a timely fashion, goods and services needed to serve the people of California.

State purchases range from simple to complex, from a few dollars to millions of dollars, from low risk to high risk. However, one common thread applies to all procurements, whether they are goods, services or Information Technology (IT). They are essential to the work of state government. Without them, civil servants—janitors, engineers, educators, law enforcement, nurses and other employees—cannot serve the public needs.

It has long been recognized that the state's procurement process is complicated, costly, time consuming and unable to ensure that quality goods and services are obtained for state programs. Each year the state uses this process to acquire billions of dollars in goods and services essential for the state to provide service to the public.

Except for minor improvements made in past decades, the need to modernize California's procurement system has been well documented. Today, the state's purchasing system remains fragmented, subject to delays and unable to deliver cost effective purchases. The system needlessly taxes the time of users, suppliers, and procurement professionals with laws, policies and procedures in such a patchwork fashion that they conflict in many areas. This labyrinth of codes and statutes no longer facilitates a system that ensures quality products are obtained in the most efficient and cost effective manner. Even during a weak economy with few opportunities, the cost of providing bids discourages suppliers from doing business with the state, and hampers state employees from initiating innovations and process improvements.

The following examples illustrate the need to modernize the state's procurement system:

- Suppliers with records of poor performance remain eligible to bid;
- Non Competitive Bid (NCB) process problems interfere with programs and their ability to provide services to the state;
- IT procurement is over burdened with process approvals and the process can take more than a year to award a contract;
- Delegations are slow to increase and little training is offered to increase user competency;

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- Costs of procurement (cents per dollar spent or cost or cost of purchase order) are unknown but likely are above the national average; and
 - California pays millions of dollars in late payment fees due to the slow procurement payment process. The state is also unable to take advantage of prompt payment discounts offered by suppliers.

Since California's statutes and codes have been patched together over the years, the current procurement process has become overly complicated for suppliers, costly to taxpayers, time consuming for state employees, and has delivered less than acceptable quality goods and services. Since the 1970s, the State of California has recognized the need to streamline and innovate the procurement process (California Public Contract Project 1978, 31 recommendations). Again in the 1990s, several reports highlighted the need to restructure the state procurement process and bring it up to date with current best practices (Little Hoover Commission Report 1993, 26 recommendations, and DGS "Procurement 2000"). In all cases, only limited improvement has occurred. More recent studies exemplify the need for a major overhaul of procurement for the state agencies.

The State of California can no longer afford an archaic and expensive procurement system that does not effectively manage the state's contracting of billions of dollars in goods and services per year. The recommendations outlined in this report will provide the state with various opportunities to reduce costs as well as improve the business climate for suppliers seeking the state's business.

The Modern Approach

The intent of modernizing the state's procurement system through a fundamental redesign is to produce major improvements in momentum, cost and value. Many other states are benefiting from these same significant advancements in both modern procurement process and the use of technology in place of complex and time-consuming practices.

The key focus areas of California Performance Review's (CPR) modernization approach to procurement are as follows:

Establish a central procurement unit at a level that removes core Department of General Services (DGS) resources from the role of single transaction mode to the level of strategic sourcing, and central oversight with a greater emphasis on user enablement. The Department of General Services has not fully achieved the vision of a decentralized, knowledge-based strategic partner in procurement. Recent studies, however, evidence the need for centralization in a progressive and technology-driven purchasing environment. The National Association of State Procurement Officers (NASPO) advocates in "State Procurement: Strategic Positioning for the 21st Century," the grand strategy of moving from a process-based to knowledge/accountability-based organization. In its 1993 report "Procurement Reengineering Project: Final Report," the State of Texas recommends that the role of the central purchasing



organization should be of a service provider, standard setter, and procurement planning consultant. California's efforts have focused on transactions and control. According to NASPO, "The next step is to demystify the process through simplification and delegation of the routine processes where value cannot be added. This allows the central procurement office the opportunity to function as a knowledge/management-based organization, a strategic player in the business management of the state. The professional procurement managers serve as consultants, instructors, business process designers and problem-solvers. The central office retains control of complex, high risk, high-dollar transactions where trained experts add value." California needs to take this step.

Review and change statutes and regulations to facilitate a modern procurement system and enable the appropriate management of the state's acquisition of goods and services.

California's procurement statutes are needlessly complicated, sometimes contradictory, and are interspersed throughout various codes. According to the 2002 *Governor's Task Force on Contracting and Procurement Review*, "there are laws governing one or more aspects of contracting and procurement in nearly every one of California's 29 Codes," and " . . . at least 140 known exemptions from (1) the provisions of the Public Contract Code, (2) competitive bidding, (3) DGS review and approval, and (4) any possible combination of the first three." Developed in piecemeal fashion over the years, California's complex maze of statutes are inconsistent, conflicting, and require tremendous effort to manage. This translates into a costly and lengthy process to acquire even the simplest of goods and services as stated in the "1996 Senate Commission on Cost Control in State Government." The failed California Acquisition Reform Act (CARA) attempted to address this, however the proposed legislation proved to be so lengthy and detailed that it could not pass the legislature. Statute changes should reorganize, simplify and streamline state statutes into a single, uniform and understandable code.

Implementation of a single statewide electronic procurement system that collects all state procurement and contracting information will facilitate a greater ability for the state to strategically source its procurement and contracts. An integrated statewide procurement system would capture transaction detail on all purchases, and automate and streamline requisitioning, receiving, and payment activities. This must be a complete system that encompasses all areas of the procurement process: sealed bids, reverse auctions, requisitions, purchase orders, contracts, supplier performance ratings, workflow management, business rules enforcement, auditing tools, and connect to the State Controller's Financial System for prompt payment.

Utilize progressive procurement strategies to increase value like strategic sourcing, performance-based contracts. The state should develop innovative procurement vehicles that maximize the state's buying power and facilitate life cycle procurement techniques.

Develop a shared service of procurement resources to centralized locations within each department to further facilitate the efficiency of processing and training. According to NASPO, “Purchasing should occur as close to the point of need and use as feasible. The dilemma is often in determining what is ‘feasible’. Strategic decentralization means extending the reach of feasibility—decentralizing the purchasing **process**, while maintaining centralized procurement authority and management.” The modernization approach depends heavily on shared services of procurement professionals and vested procurement authority in state agencies. CPR recommends vesting virtual procurement authority in state agencies, increasing the accountability to make the most appropriate purchasing decisions, increasing the technical and automation support for agencies and decreasing state-imposed bureaucracy and DGS involvement in individual procurements.

Redefine supplier relations and develop vendor-rating, vendor-certification and vendor-tracking programs. A new concept of “fairness” is the foundation for many of CPR’s recommendations regarding supplier relations.

The State of California has traditionally strived to achieve a “level playing field” for all suppliers. In pursuit of that goal the state has placed the supplier’s interest ahead of the taxpayers. This environment obligates the state to do business with entities it knows little about and encourages suppliers to maximize short-term profits rather than invest in long term business relationships. The state does not certify its vendors or effectively track their performance. In the event of problems with a vendor, agencies have no central entity to submit complaint notices to maintain or catalog complaints. While DGS has a Dispute Resolution Unit that addresses vendor problems on a case by case basis, it does not have an entity that tracks overall vendor performance. The number of complaints against a vendor remains unknown and there is no system in place that prevents awards to substandard vendors. Subsequently, DGS does not rate vendors or evaluate them for their past performance on state contracts even though it has been provided statutory authority to do so.

California should create an environment where suppliers are encouraged to participate but are also encouraged to provide the timely delivery of quality goods and services. The most effective way to accomplish this is to develop a program that evaluates and screens vendors for their product offerings and their record of past performance. CPR recommends that the state implement a program that will develop a rating system to motivate vendors to provide on-time deliveries of the best products and services. The state should develop criteria to evaluate vendors based on the quality, delivery, service, past performance, financial capability, technical competence and other non-price factors to determine their capability.

Improve programs designed to increase Small Business and Disabled Veteran Business (DVBE) participation in state contracting and procurements. In the 1980s the Legislature enacted statutory changes to enable California Certified Small Businesses the ability to have greater



participation in the state competitive bid process by allowing a 5 percent bidding preference over large businesses. In 1999, the legislature also enacted AB 1933 to establish a 3 percent goal for the participation of DVBE in state contracts. While both the bidding preference and the goal have facilitated DVBE sub-contracting and allowed small business to be competitive in the bid process, it has also created an environment in which the state has paid higher prices, received less competition, and in some cases allowed businesses to fraudulently represent themselves in order to achieve the preference or DVBE standing.

CPR recommends that legislation be adopted to eliminate any preferences or goals and develop set-a-side programs that requires all state agencies, departments, boards, and commissions to maximize the opportunity offered to them under Government Code Section 14838.5 and competitive bid contracting opportunities to certified Small Business firms and certified DVBE firms for the acquisition of goods, services, IT and construction.

Eliminate Preference Programs (Target Areas, Enterprise Zones and Military Base Recovery Area, etc.). In the 1980s and 1990s the Legislature enacted statutory changes to enable California businesses the ability to have greater participation in the state competitive bid process by allowing up to 15 percent or \$100,000 in bidding preferences if their businesses were located in economically distressed areas, local military base recovery areas, or if they employed high risk employees. These programs were established as a partnership between state government and businesses to improve California's overall economy. While the intent behind the statutes is well intentioned in improving the contracting participation of California businesses, the impact of these programs has been fiscally detrimental by driving up state contracting costs. Although the programs have created a focus on supporting the participation of California businesses, the existing benefits of the programs provide ample tax incentives and rewards that will allow them to operate and provide a business service in the state.

CPR recommends that legislation be adopted to eliminate incorporating these bidding preferences in formal bid solicitations.

Eliminate the state's current protest processes and replace it with a more streamlined and simplified process. The state procurements system's current dispute resolution process is complex, protracted, and not responsive to the interests of state agencies and the suppliers of goods and services. It is very disruptive to the delivery of essential state services and produces significant unwarranted costs to state agencies.

CPR recommends that legislation be adopted to reform and streamline the protest process.

Improve the state's receiving and accounts payable process. In Fiscal Year 2002–2003 the state paid almost \$5 million dollars in late payment penalties. While several of these late payment penalties were attributed to delays in the approval of the state budget, state agencies need to improve the invoice payment process by streamlining the paper payment process, reduce late

payment penalties paid to vendors, increase vendor rebates received, and improve the overall business climate. Although late budgets have been common over the years, some state agencies have not adjusted their budgeting or payment processes to create sufficient funding sources to pay contractors during the critical time between fiscal years. Instead this burden of inefficiency has been passed on to the taxpayers.

CPR recommends the state streamline the invoicing process by incorporating a statewide e-procurement system and a statewide accounting system to process payments.

Expand the Software Licensing Program to achieve greater saving in the acquisition of software products. As a large purchaser of computer software products and applications the state needs to leverage its buying power to achieve the best possible costs for all state entities. CPR recommends that the state expand site licensing/strategic sourcing opportunities for software and renegotiate where possible existing software licensing programs for potential price breaks. Any software used by state, cities, counties and other government entities should where feasible be strategically sourced, and where the state can co-op with other states and or the federal government the state should review those options. In addition, the State should reduce limitations to the requirement for the purchase of state used software.

Report Organization and Recommendations

The recommendations that follow in this report outline specific issues, background and recommendations needed to modernize California's procurement system.

The CPR Procurement Team recommendations will require a multi-year commitment to ensure all links in the chain are complete. Substantial time, resources and resolve will be required.